Cur. Adv. Vult.

Rose C.J.: This is an appeal against an acquittal. The first respondent is a revenue officer and the suggested defence is that this is a case which falls within section 48 of the Dangerous Drugs Ordinance (Chapter 137). It is clear from section 36 of the Ordinance that the burden of proving that exception rests upon the defence. Having studied the grounds of decision given by the learned District Judge I am unable to conclude that he has come to a positive finding of fact that the exception has been established. Rather he would have appeared to have formed the view that the case is one of doubt and that that doubt should be resolved in favour of the respondents. With all respect to the learned District Judge I consider that that is not a correct view of the matter. It seems to me that if at the end of the prosecution case there were not sufficient facts to establish affirmatively that the exception under section 48 had been established, then the proper course was for the defendants to be called upon for their defence. As the matter will have to be investigated further, I do not wish to comment upon the value of the evidence in the case. The appeal must be allowed and the matter remitted to the learned District Judge to enable him to consider the defence, and determine the case according to law.

Appeal allowed.

Solicitors: *C. J. Koh & Co.*

PRACTICE DIRECTION

[J.C. March 17, 1959]

Privy Council — Costs — Refresher fees to counsel.

The following direction is issued by the Privy Council Office:

The Registrar of the Judicial Committee of the Privy Council begs to notify parties in appeals to Her Majesty in Council that the practice of allowing upon taxation of costs only 10 guineas a day as refresher fees to both senior and junior counsel is to be discontinued. On taxation of costs of appeals set down for hearing after May 8, 1959, the registrar may in his discretion allow refresher fees to counsel in excess of 10 guineas. On refreshers which are allowed the junior counsel will have the usual two-thirds of the senior's fee.

Registrar.

ABIRAMI AMMAL & ANOR. v. M.S.M.M. MEYAPPA CHETTIAR

[C.A. (Thomson C.J., Rigby & Hepworth JJ.) January 22, 1958]

[Ipoh — F.M. Civil Appeal No. 11 of 1958]

Moneylender — Non-compliance with an express provision of the Ordinance — Unenforceable transaction — Security by way of charge — Borrower entitled to relief by way of return of documents of title and entry of a memorandum of discharge on the land register — Moneylenders Ordinance, 1951, s.16.

Land Code — Security executed in form of charge in the form prescribed by Schedule XXIV (a) of the Land Code — Whether particulars contained in the charge sufficient to satisfy the requirements of s.16(3) of the Moneylenders Ordinance.

In this case on July 2, 1953 one C.P. borrowed $3,000 from one V.C., a moneylender, and the same day by way of security he executed a charge in the form prescribed by Schedule XXIV(a) of the Land Code. An authenticated copy of the charge was handed to C.P. before the money was delivered to him and the charge was duly registered. On January 14, 1954, C.P. transferred the land which was still subject of the charge to Sockalingam Mudaliar, a moneylender. On July 22, 1955, Sockalingam Mudaliar died and the present appellants are the executors of his will. On March 16, 1954 V.C. transferred the charge to the present respondent, who is also a moneylender, and on April 7, 1954, the respondent served on Sockalingam Mudaliar a notice under section 138 of the Land Code requiring payment of the principal sum and interest. This notice was not complied with and on January 11, 1957, the respondent commenced the present proceedings against Sockalingam Mudaliar's executors.

The executors (the present appellants) resisted the respondents claim on the ground that the charge was security given by the borrower in respect of a contract for the payment of money lent to him by the moneylender, that no note or memorandum of the contract had been signed and delivered in accordance with section 16(1) of the Moneylenders Ordinance and that it was therefore not enforceable by the reason of the provisions of that section. They went on to ask for an order that the respondent return to them the documents of title relating to the land which had been handed to the chargee when the land was charged and an order against the respondent to discharge the charge or otherwise have it removed from the land register.

The learned trial Judge took the view that the charge itself contained all the particulars required by section 16(3) of the Ordinance and it thus itself constituted a note or memorandum of the contract. He accordingly held that section 16(1) of the Ordinance had been complied with and as there was no question of the fact of the loan or of the authenticity of the charge or